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IN THE

Supreme Court of the United States

OCTOBER TERM 1950

NO. 125

WILLIAM EDWARD WOODS, *Petitioner,*

v.

THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY,

Respondent.

PETITIONER'S REPLY BRIEF.

WILLIAM EDWARD WOODS
Petitioner

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Respondent.

PETITIONER'S REPLY BRIEF.

Your petitioner believes that the interest of justice requires him to reply to respondents' brief in opposition to his petition for writ of certiorari in this cause, and that the interest of clarity and justice warrants the filing of a reply brief.

References (R.) are to the transcript of record on the leave to appeal proceeding, bound in the customary brown binding, except where otherwise indicated by (E. R.) in which instances the references are to the transcript of record, bound in gray, on the writ of error proceeding.

In this way, the misstatements of law and fact and the evasions and omissions contained in respondent's brief, can and will be fully demonstrated, to the end that the iniquitous disregard by the Appellate and Supreme Courts of Illinois of petitioner's statutory and constitutional rights be brought to light, and that the legalistic smoke-screen with which respondent seeks to enshroud and camouflage the gross injustice inflicted upon petitioner, be dispelled.

The petitioner's reply presents with clarity and fullness, the answers to all of the issues impelling this Court to reinvest this petitioner with all his legal and equitable rights that both the congressional laws and the Constitution of the State of Illinois and the United States have bestowed upon him. All of these rights the record patently discloses have been despoiled and destroyed by the Illinois Courts, as a result of which the petitioner has lost wages in the amount of $14,000.00 to date.

The respondent railroad company contends, in fine print, (Resp. Brief in No. 125, pp. 11-12) that even though petitioner will be precluded from recovering under the Federal Boiler Inspection Act on a second trial of this action under the opinion of the Illinois Appellate Court he could, after a foredoomed appeal to the Appellate Court, petition the Supreme Court of Illinois for leave to appeal. If the Supreme Court of Illinois should finally hold that the petitioner was entitled on the evidence already adduced to the instructions which were given with respect to the Boiler Inspection and Safety Appliance Acts, the petitioner could then have a third trial to vindicate his rights subject to further appeals and further delay. What chance would this petitioner have on a second or third appeal to the Supreme Court of Illinois in view of its conduct in refusing to correct the gross injustice which the Appellate Court has inflicted upon petitioner?

It is safe to predict that petitioner's loss of earnings by the time this protracted course of litigation is finally concluded will have doubled or tripled that already sustained,

provided the petitioner can stand the expense of such protracted litigation and lives to see it through. There is no truer axiom in this situation than, "Justice delayed is justice denied."

Respondent in No. 43 does not dispute, but tacitly admits, that the refusal of the Illinois Supreme Court to permit petitioner to file his proffered petition for writ of mandamus has *every attribute of finality* of the highest court of the State to enable this court *to review the ruling of the Illinois Supreme Court* under the provisions of Sec. 1257 (3) of Title 28 of the United States Code. The respondent affirmatively admits (Resp. Brief in No. 43, p. 3) that the mandamus action presented federal questions; however, they contend that this erroneous decision of the Illinois Supreme Court which they studiously and understandably refrain from undertaking to defend on the merits, is sustainable under Illinois law. We assert that under Illinois law this contention is base and fallacious. The reasons are two-fold:

1. The substantive rights and liabilities of the parties are created and defined exclusively by federal law, statutory and constitutional, and must be determined uniformly in all courts throughout the nation, including the courts of the State of Illinois, in accordance with federal decisional law.

2. The local law of Illinois and the rules of Illinois courts relating to and regulating practice and procedure governing appeals and other forms of review do not present the type of non-federal question behind which the glaring errors of the Illinois Appellate and Supreme Courts in the decision of the substantive federal questions in this cause can find immunity from correction by this Court.

Respondent's contention in No. 125 is that the orders of the Illinois Appellate and Supreme Courts are not "final judgments or decrees" within the meaning of 28 U. S. C.

Sec. 1257 and it attempts to brush off the power and jurisdiction conferred on this Court by Section 1651 of Title 28, United States Code, by a dogmatic and unsupported footnote to the effect that that section is not a source of jurisdiction to review state court judgments.

The Court must repudiate respondent's contention; otherwise the desired uniformity which this Court has emphatically said must be applied in all courts, state and federal, for the protection of the injured interstate carrier employees, would fail.

The claim by the respondent that the record does not support petitioner's contentions that the decisions of the Appellate and Supreme Courts of Illinois denies to him the constitutional guaranty of his right to a trial by jury, and of equal protection of the laws and do not nullify his federally created rights provided by the Federal Employers' Liability Act, the Federal Boiler Inspection Act and the Federal Safety Appliance Act, is as baseless as it is false.

Does respondent's counsel believe that this Court will not examine the record, including the proceedings on and the evidence adduced at the trial; likewise the Appellate Court's opinion and the subsequent proceedings, before passing on these applications for certiorari?

Does not the record (R. 55-57; ER. 7-9) contain an admission of guilt, both under the Federal Employers' Liability Act and the Federal Safety Appliance Act, made by counsel and spokesman for the railroad company at the opening of the trial, a year after he had taken petitioner's deposition by which the railroad company and its counsel was fully informed of petitioner's claims as to the inefficiency of the hand-brake on the coal car which permitted it to drift from a safe to an unsafe place after the brake was applied? (R. 56, 84, ER. 8, 36)

Is it not true that petitioner testified that the rear headlight on the tender of the backing locomotive was defective, and looked as if it had been smashed and as if the reflector was off, and that it was out of focus and cast its light up

in the air at an angle of about 45 degrees, leaving the area of 50 to 75 feet immediately behind the backing tender in complete darkness and disabling him from seeing the fouling coal car until it was too late for him to get to a place of safety and to avoid the grievous injuries he sustained when he was caught, crushed, and rolled in the narrow space between the side of the backing tender and the side of the fouling coal car?

Did not the Appellate Court, to which this same counsel again admitted liability in his printed brief and oral argument in open court, state in its opinion that petitioner's testimony as to the defect of the rear headlight created a jury question if the defect of the rear headlight could be made the basis of a violation of the Boiler Inspection Act?

Does counsel expect this Court to subscribe to the proposition that the permanent fixed-focus rear headlight was not a part and an appurtenance of the locomotive and within the scope and command of the Federal Boiler Inspection Act irrespective of the particular use to which the locomotive was being put at the precise moment of injury, and irrespective of the limited requirements of the rules of the Interstate Commerce Commission even under the far too narrow construction which the Appellate Court has ascribed to them?

Does counsel seriously expect this Court to say that a bad back-up or rear headlight permanently affixed to the tender by a fixed-focus method of application to light the way through the darkness of an unlit railroad yard, is better than no light at all and constitutes no violation of the Federal Boiler Inspection Act because it "created" no additional peril, despite the fact that the peril which resulted in petitioner's injury would not have existed if the back-up light had been in proper condition, lighting the area of greatest danger in the immediate vicinity of the backing tender and enabling petitioner to see the fouling coal car in time to avoid injury, notwithstanding the admitted negligence of the railroad company in permitting the coal car to